

Delhi High Court

Delhi High Court

Union Of India vs Dr. H.C. Sharatchandra on 21 November, 2013

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 21.11.2013

+ WP(C) No.5827 of 2013 &CM.12828 of 2013 (stay)

UNION OF INDIAPetitioner Through: Mr. Saqib and Mr. Akshay Chandra, Advs.

Versus

DR. H.C. SHARATCHANDRARespondent Through: None

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The respondent before this Court vide his application dated 31.1.2011 sought the following information from the CPIO of the Prime Minister's Office):

1. Date(s) of the meeting Honâble Prime Minister attended meeting of Appointment Committee of Cabinet (ACC) held to consider approval/ disapproval of candidates selected as Expert Members to National Green Tribunal with names of other ACC members who attended such meeting(s). Information refers to papers sent by MOEF vide their note OM No.17(11)2011-PL-NGT dated 31.03.2011 and or any subsequent communication on the same subject.

2. If the decision was taken by circulation of files, then the details of file movement - date on which the file reached Honâble Prime Minister as Chairman of ACC, date on which the decision was

W.P.(C) No.5827/2013 Page 1 of 8 made and he affixed his signature and the date on which the file was forwarded to the concerned with a copy of the noting signed by him.

3. Copies of the supporting documents relief/ considered by the Honâble Chairman, Appointment Committee of Cabinet, for approving/ not approving candidates, selected by the duly constituted selection committee for selection of Expert Member, in particular papers relating to candidate at S.No.1 in the merit list to National Green Tribunal in interview held on 5th February, 2011.

4. Convenient dates in second part of February to inspect the file movement register relating to ACC papers dealing with item 1 above, I request alternate dates may please be given so that I can come on a mutually convenient date.

5. Year to which the above pertains, 2011.

6. Designation and address of the SPIO from who information is required.

2. The said application was transferred by the CPIO to his counterpart in PMO on the ground that ACC matters were handled in the said department. The respondent preferred an appeal before the First Appellate Authority which directed the CPIO to write again to the respondent and provide available information. In compliance of the said decision of the First Appellate Authority, the CPIO in PMO vide communication dated 18.5.2012 supplied certain information to the respondent. The learned counsel for the petitioner submits that information at point numbers 1 and 2 was supplied vide communication dated 18.5.2012.

3. Since the respondent was not satisfied with the response received by him, he preferred a second appeal before the Central Information Commission (CIC). The Commission vide order dated 31.12.2012 held that it was not entirely wrong on the part of CPIO of PMO to have transferred the RTI application, but on particular matter i.e. movement

W.P.(C) No.5827/2013 Page 2 of 8 of file, the dates on which it was received and put up to the PMO and when it was finally sent back, would have been provided by the CPIO of PMO. The CPIO was accordingly directed to send all the relevant entries in the register in which the movement of the file had been recorded in the PMO to the respondent. It was further directed that in case the movement was recorded electronically, the CPIO shall send a printout of the relevant entries.

As regards copies of the supporting documents, based on which PMO had decided on the proposal submitted to him, the Commission was of the view that the documents which form part of the Cabinet papers should be disclosed after the decision is taken and implemented and the matter is over. The CPIO was accordingly directed to send the copies of those papers.

5. In compliance of the order passed by the Commission, the electronic movement of the files was sent to the respondent vide communication dated 23.1.2013. However, the directions given by the Commission to provide copies of the supporting documents based on which PMO had decided on the proposal submitted to him are not acceptable to the petitioner and the order passed by the Commission is challenged to the said extent.

The contention of the learned counsel for the petitioner is that the information directed to be disclosed to the respondent is exempt from disclosure under Section 8(1)(j) of the RTI Act and is also protected under Article 72(2) of the Constitution.

6. This issue recently came up for consideration before this Court in W.P.(C) No.14069/2009, Union of India versus Pramod Kumar Jain [decided on 19.11.2013] and the following view was taken:

W.P.(C) No.5827/2013 Page 3 of 8 "6. It would be seen from a conjoint reading of the main Clause (i) and the first proviso to the said Clause, that though there is a prohibition against disclosure of Cabinet papers, which would include record of deliberations of the Council of Ministers, Secretaries and other officers, such prohibition as far as RTI Act is concerned, is not for all times to come and has a limited duration till the Council of Ministers takes a decision in a matter and the matter is complete or over in all respects. Considering the context in which the words "the matter is complete or over" have been used it appears to me that once the decision taken by the Council of Ministers has been given effect, by implementing the same, the prohibition contained in Clause (i) is lifted and the decision taken by the Council of Ministers, the reasons on which the decision is based as also the material on the basis of which the said decision was taken can be accessed under the Right to Information Act. Mr. Dubey, the learned counsel for the petitioner- Union of India has drawn my attention to the fact that the expression used in the main Clause is â cabinet papersâ whereas the first proviso refers only to the decision of the Council of Ministers, the reasons thereof and the material on which such decisions are based. The Cabinet comprises of the Prime Minister and the Cabinet Ministers whereas the Council of Ministers comprises not only the Prime Minister and the Cabinet Ministers, but also the Ministers of State and the Deputy Ministers. Therefore, the Council of Ministers is a larger body as compared to the Cabinet. Hence, once the decision taken by the Council of Ministers/Cabinet has been

implemented, the decision taken by the said Council/Cabinet as well as the reason for such decision and the material on the basis of which the decision was taken cannot be withheld by the concerned CPIO.

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7. Mr. Dubey points out that in Clause (i), Cabinet papers include record of deliberations not only of the Council of Ministers but also of the Secretaries and other officers but the proviso does not apply to the deliberations of the Secretaries and other officers, meaning thereby that even after a decision has been implemented, the deliberations of the Secretaries and other officers cannot be disclosed. A careful perusal of the proviso would show that not only the decisions of the Council of Ministers and the reasons on which the said decisions are based but also the material on the basis of which the decisions are taken by the Council of Ministers are also required to be disclosed, once the decision has been

implemented. Therefore, in case the deliberations of the Secretaries and/or other officers constitute the material which formed the basis for the decision of the Council of Ministers, the said deliberations of the Secretaries and/or other officers also cannot be withheld.

8. Mr. Dubey also draws my attention to Article 74 (2) of the Constitution of India which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court and submits that in view of the said prohibition, the decision taken by the Cabinet Committee on Appointments (ACC), the same being advice tendered to the President, cannot be directed to be disclosed. The question which arises for consideration from the submission made by Mr. Dubey is as to whether the decision taken by the Cabinet Committee on Appointments (ACC) on promotion of Additional Chief Engineers to the grade of Chief Engineers in MES of the Ministry of Defence amounts to "advice tendered by Ministers to the President" within the meaning of Article 74 of the Constitution or not. A similar issue came up for consideration before a Division

W.P.(C) No.5827/2013 Page 5 of 8 Bench of this Court in Waris Rashid Kidwai Vs. Union of India & Ors. (1998) ILR Delhi 589. The petitioner in that case filed a petition challenging the mode and manner of appointment to the post of the Chairman and Managing Director of Minerals & Metals Trading Corporation (MMTC). The procedure for filling up the said post was that the Public Enterprises Selection Board (PESB) used to lay down job descriptions, qualifications and experience for eligible candidates, shortlist candidates out of the eligible officers, hold interviews, make a panel of candidates selected as suitable for the posts and forward the same to the concerned Ministry for processing the case for approval of Appointments Committee of the Cabinet (ACC). The concerned Ministry would then process the case and forward the proposal to the Establishment Officer, Ministry of Personnel, Public Grievances and Pension who was the Secretary of the ACC for obtaining and conveying the ACC decision on the proposal. The ACC comprises the Prime Minister, the Home Minister and the Minister In-charge of the concerned Ministry. The Secretary, ACC would submit the proposal to the Home Minister and the Prime Minister through the Cabinet Secretary and the decision was finally approved/taken at the level of the Prime Minister and conveyed to the Ministry concerned by the Secretary, ACC. Mr. Arun Jaitley, counsel for the respondent contended before this Court that it cannot enquire into the respective opinion which the Members of the ACC may have expressed while considering cases of such appointments. In this regard, he contended that the decision of ACC was in the nature of advice tendered by the Council of Ministers to the President and, therefore, the Court cannot enquire the question as to what advice was tendered. He also contended that ACC was constituted to conduct business of the Government as stipulated

W.P.(C) No.5827/2013 Page 6 of 8 by Article 77 and its business was deemed to be a decision of the Council of Ministers and was in the nature of aid and advice to the President. Rejecting the contention, this Court *inter alia* held as under:

"20.It has, however, to be borne in mind that what is debarred to be enquired into is the aid and advise and not the material on which the advise is tendered by the Council of Ministers. That material cannot be said to be part of the advise and it is thus outside the exclusionary rule enacted in Article 74(2) of the Constitution (See: S.P. Gupta & others Vs. Union of India & Ors, and R.K. Jain Vs. Union of India & others,). Further, such an appointment does not call for any aid and advise to the President as contemplated by Article 74(1). It is only an appointment in the name of the President which is altogether a different matter. Such appointments cannot be said to be based on the advise of the Council of Ministers to the President and thus these appointments cannot be said to be protected under Article 74(2)....."

In view of the pronouncement of the

Division Bench, there is no escape from the conclusion that the decision of the ACC in the matter of promotion of a Government servant does not constitute advice of the Ministers to the President within the meaning of Article 74 of the Constitution and, therefore, cannot be withheld if it is otherwise accessible under the provisions of the Right to Information Act."

7. Considering the view taken by this Court in Pramod Kumar Jain(supra), the present writ petition is liable to be dismissed since the

W.P.(C) No.5827/2013 Page 7 of 8 petitioner, in my view, is required to disclose the material on the basis of which the decision was taken by the Cabinet Committee of Appointments, since, admittedly, the aforesaid decision has already been implemented.

The writ petition is accordingly dismissed. There shall be no orders as to costs. All pending applications also stand disposed of.

NOVEMBER 21, 2013/rd V.K. JAIN, J.

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